

FRONT LINE

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OFFICE OF MISSOURI ATTORNEY GENERAL

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AG's Office works with law enforcement to prevent racial profiling

THE AG's OFFICE is working with law enforcement throughout Missouri to implement the requirements of a new law designed to prevent racial profiling. The law took effect Aug. 28.


The new law provides that officers will document data, including race, of any driver stopped for violating a motor vehicle statute or ordinance.

The law also requires law enforcement to report data collected from Aug. 28 through Dec. 31 to the AG's Office by March 1, 2001.

To assist law enforcement, Assistant Attorneys General Tim Anderson and James Klahr traveled throughout the state to help educate officers about the new law and provide forms to help them implement the law.

"Our goal has been to work with law enforcement to fully comply with the law in an efficient and timely manner,"

FOR MORE INFORMATION

Call Assistant Attorney General Tim Anderson at 573-751-1508. The office also will respond to commonly asked questions on AGOnline. 

said Attorney General Jay Nixon.

He will address the Missouri Police Chiefs Association's annual conference in Columbia on Sept. 29.

Emergency rules filed

The AG's Office filed emergency rules to help implement the new racial profiling law. The rules give officers guidelines for documenting the race of stopped drivers.

The permanent proposed rules are posted on AGOnline. Public comments are being taken through Oct. 16.

How to use forms

Reporting forms and instructions can be found inside Front Line and on AGOnline.

- **Instructions** for the Annual Report and Minority Status forms.
- **Annual Report form** is the overall reporting form that must be completed, signed and sent to the AG's Office by March 1, 2001.
- **Traffic Stop by Race/Minority Status form** breaks out data by race from the Annual Report. This form also must be submitted by March 1 for each of the six minority categories.
- **Traffic Stop Information form** to be used for daily stops. Although not a mandatory form, this form was designed to be filled out by an officer in about 15-20 seconds following a stop. Information on this form is required on the Annual Report form.

High-tech, computer crime unit assisting law enforcement

THE MISSOURI HIGH TECH and Computer Crime Unit is available to assist law enforcement throughout the state with Internet-related legal, investigative and technical issues. The unit is headed by Dale Youngs, an experienced prosecutor who already has handled a number of Internet-related cases. He can be reached at 816-889-5000.

"Youngs brings experience and expertise in computer related crimes," Attorney General Jay Nixon said. "Our focus on Internet crimes has intensified over the past few years, and this unit will amplify that effort."

The AG's Office obtained the first criminal conviction

in the country against an Internet gaming company and obtained a court order to stop another business from selling liquor to minors. Two southwest Missouri men have been sentenced to prison following the Attorney General's investigation and prosecution of fraudulent sales over the Internet and counterfeiting money.

Youngs also is leading the prosecution of a 19-year-old Smithville man who allegedly terrorized a middle school by making threats on the Internet and who is now charged with promoting child pornography and harassment. The trial is set for Sept. 25 in Clay County.

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FRONT LINE REPORT

8th Circuit allows civil rights claims over pursuits

A JULY 25 DECISION by the 8th U.S. Circuit Court of Appeals, which includes Missouri, probably will have a significant and detrimental impact on police pursuits in Missouri.

Historically, lawsuits arising out of police pursuits have been filed in state courts as tort claims alleging negligence by the pursuing officer.

Lawyers have, however, consistently tried to get these lawsuits into federal courts by asserting that the officers' actions violated constitutional rights.

These attempts to file lawsuits over pursuits were largely unsuccessful. For example, in 1998 the U.S. Supreme Court seemed to foreclose such lawsuits when it issued *Sacramento v. Lewis*, 523 U.S. 833 (1998). The court held that lawsuits involving pursuits should not generally be filed in federal courts unless the plaintiff can prove the officer acted with the "purpose to cause harm unrelated to the legitimate object of arrest."

Thus, "high-speed chases with no intent to harm the suspects physically

or worsen their legal plight do not give rise to liability under the Fourteenth Amendment, redressible by an action under § 1983."

In *Lewis*, the officer ran over a passenger on a fleeing motorcycle, but there was no reason to believe the officer intended to do this. Because a pursuing officer seldom, if ever, has a reason to harm anyone, the *Lewis* decision seemed to signal that pursuit cases would remain in state courts and not rise to a constitutional claim.

The 8th Circuit's July 25 decision in *Fiest v. Simonson*, however, has substantially eroded officers' protection from federal claims. In *Fiest*, a Minneapolis officer pursued a stolen car that ran two stop signs and two stop lights before driving the wrong way on an interstate.

Fiest, an innocent citizen, was killed when his vehicle was struck by the stolen car. Fiest's family filed a federal lawsuit against the officer and the city of Minneapolis, claiming the pursuit "shocked the conscience" and

violated the U.S. Constitution.

The 8th Circuit ruled the plaintiff did properly assert a constitutional violation because the officer had time to "deliberate" while driving in the wrong lane.

The court's decision fails to consider the many decisions a pursuing officer must make and it seems unreasonable to assume an officer has time to reconsider a decision made in a split second. Yet, the court suggests any time an officer has time to "second guess" a decision, "deliberation" has occurred and any mistake becomes a constitutional violation.

The Attorney General's staff, which reviewed the decision, has concluded that this decision, if it stands, will greatly increase the number of federal claims and substantially impact pursuits. The decision appears to negate the impact of the Supreme Court's *Lewis* decision and plaintiffs now need only prove what is essentially "negligence" to hold officers liable for a constitutional violation.